

Vermont State Ethics Commission
Summary of 2nd Annual Report: 2019 In Review

Office Administration: Executive Director now responsible for all aspects of running this state office.

2019 In review: Executive Officer Financial Disclosure Forms provided, collected, posted on Ethics Commission website, Advisory Opinion Policy Changes, Advisory Opinion withdrawn, trainings provided, complaints received, evaluation of ethics oversight in Vermont and its gaps.

Ethics Trainings: No legislative ethics trainings were provided in 2019. One is planned for 2020. Executive director provided or participated in 5 ethics trainings for State employees and one State Commission.

Advisory Opinion Process: The Commission reviewed over several months its advisory opinion process. The process was revised in May 2019. New advisory opinion policy: Only state public servants may request an advisory opinion. Advisory Opinions will be limited to discussing the current or prospective conduct of the public servants requesting the opinion. "Third-party" requests for Ethics Commission opinions about public servants are no longer accepted. Advisory Opinion 18-01 was withdrawn in September. The process leading to its issuance was incorrect and not consistent with legislative intent.

Advisory Opinions and the Code of Ethics: The Code of Ethics adopted by the Ethics Commission in consultation with the Department of Human Resources (DHR) is not legally binding on anyone in State government. It can be ignored without consequence. Ethics Code violations cannot be sanctioned. Ethics advice rendered based on the Code of Ethics is of limited value.

Code of Ethics Revision: The Commission revised the Code in November to clarify its provisions.

Ethics Commissioner and Executive Director Education: Two commissioners and the Executive Director participated in the Council on Governmental Ethics Laws annual conference gaining perspective, information, and understanding of ethics oversight in other states and countries.

Complaints and Guidance: The Commission received 23 complaints in 2019 an increase of 22% from 2018. Six of the complaints were referred to other entities as permitted by statute for further action. Two of the cases remain pending. The remainder were closed with no action. See below. Complaints were made against: State officers, legislators, State regulatory boards or commissions, judicial branch members, attorneys employed by the State. Also received: Several complaints against municipal employees, officers and governing bodies.

Complaints Against State Officers: Complaints referred to the Attorney General's office and DHR were closed. See, Annual Report for explanation of enforcement limitations.

Complaints Against Legislators: Two complaints referred to the appropriate body's ethics panels were closed.

Complaints Against Attorneys: The complaints referred to the Professional Responsibility Board have been closed.

Complaints about Judicial Branch Members: The one complaint received was closed without referral. The subject of the complaint was no longer a judicial branch member.

Complaints against Boards and Commissions: One complaint was referred to the Attorney General's office. No action was taken citing insufficient evidence. The second complaint is under preliminary review.

Complaints against State Employees: One complaint regarding possible illegal directives given has been referred to DHR.

Complaints Beyond Ethics Commission Jurisdiction: The Ethics Commission received six complaints of municipal and semi-autonomous municipal regulatory organization misconduct. Some allege very serious and disturbing conduct. The Secretary of State reports that their office hears of similar misconduct. These are beyond the purview of Title 3, Chapter 31. A common refrain: "If you can't do anything about them [selectboards], no one will know what they are doing. They aren't accountable to anyone."

No Remedy of Ethics Code Violations: The Ethics Commission can report violations of "conduct regulated by law." 3 V.S.A. § 1223(a)(1). The Ethics Code lacks the force of law, so violations of it cannot be acted upon when complaints are referred to DHR.

Why Do Some Ethics Complaints Receive No Action? The Attorney General's Office may have conflicts of interest when some complaints are referred to it. If the AGO represents an individual in litigation, then receives a complaint referral from the Ethics Commission, a potential conflict of interest can prevent it from pursuing the ethics complaint.

- Complaints referred to DHR about the Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, or Auditor of Accounts cannot receive any DHR action. DHR has no authority over State Office Holders. Complaints regarding the approximately 175 State Boards and Commissions – same result. DHR has no authority of them when they are not "state employees." Complaints against legislators are heard first by the House and Senate Ethics panels who have authority to enforce only their own rules. The Professional Responsibility Board cannot sanction conduct violating the State Ethics Code unless it violates attorney disciplinary rules which are narrower. Many complainants express frustration about gaps in ethics oversight.

Guidance Requests and General Information: Five requests for guidance provided. One was in writing. The Executive Director responded to numerous requests for information about ethical implications of government conduct.

Recommendations: The Ethics Commission recommends: (1) An ethics code adopted by statute, (2) Make Executive Officer Financial Disclosure annual, not biennial, (3) Amend statute to clarify Advisory Opinion parameters now expressed by Commission policy, (4) Permit additional Ethics Commission Staffing when budgeted, (5) other minor changes to 3 V.S.A. Chapter 31 submitted to the legislature.

Submitted January 15, 2020